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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

PETITION FOR CLARIFICATION OR RECONSIDERATION

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Summary

AMSC's satellite system is uniquely suited to help meet the Commission's Universal Service goals by providing fixed-site communications to remote areas and furnishing urgently-needed mobile telecommunications capability to rural ambulances and other emergency medical vehicles. The Commission's Order contains several ambiguities, however, that AMSC believes should be resolved as soon as possible. Specifically, with respect to its new high-cost-area support policy, AMSC urges the Commission to clarify the following: (i) that local calls on AMSC's system qualify as "local usage"; (ii) that the same E911 standard applies to AMSC as applies to other CMRS providers; (iii) that carriers reselling services purchased from carriers not receiving support for the same facilities should be eligible to receive subsidies; and (iv) that carriers using AMSC's nationwide system can satisfy the Commission's advertising requirement by advertising their services in nationally available publications.

With respect to its universal service policy for rural health care providers, AMSC urges the Commission to clarify that the reference point for determining the size of the subsidies available for use of AMSC's system will be the applicable rates for terrestrial emergency radio systems in urban areas.

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PETITION FOR CLARIFICATION OR RECONSIDERATION

AMSC Subsidiary Corporation ("AMSC") hereby urges the Commission to clarify certain aspects of its Report and Order in the above-captioned docket^{1/} as they relate to the use of AMSC's satellite system for the provision of telephone service and emergency medical communications in rural areas. AMSC's satellite system is uniquely positioned to provide high-quality, low-cost fixed site and mobile communications in rural and remote areas that would otherwise go unserved or be served at a higher cost. Clarification of certain issues at this time concerning the eligibility of AMSC's technology and the relevant basis for comparison in establishing subsidies will greatly facilitate the use of AMSC's system for these key services.

Background

The Commission authorized AMSC in 1989 to construct, launch and operate the first dedicated U.S. MSS system, as the culmination of a licensing process that began with the filing

^{1/} Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (released May 8, 1997) ("Order").

of applications in 1985.^{2/} The first AMSC satellite was launched in 1995, and AMSC's SKYCELL Satellite Telephone Service began early in 1996. AMSC's satellite communications system covers the entire continental United States, including Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. AMSC's system for the first time provides voice and data communications services to people who live, work, or travel in rural and remote areas of the U.S. unserved by terrestrial technologies. No matter how remote an individual's location, an AMSC terminal allows that person to communicate with any party who can be reached through the public switched telephone network. As the Commission itself stated last year, the public interest benefits from AMSC's system are quite significant, offering the ability to meet rural public safety needs and provide emergency communications to any area during emergencies and natural disasters.^{3/}

Though primarily intended as a mobile service, it has always been expected that AMSC's system also would be used to provide fixed-site telephone service to households without any telephone service.^{4/} In fact, in unserved areas of low population density, the provision of fixed telecommunications using AMSC's system is more efficient than service through any wireline technology.^{5/} Fixed-site telephone service using AMSC's system is provided by installing a

^{2/} Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993).

^{3/} Notice of Proposed Rulemaking, IB Docket No. 96-132, at 6-7.

^{4/} Notice of Proposed Rulemaking ("NPRM"), 50 Fed Reg. 8149 (Feb. 28, 1985), para. 4; AMSC Authorization Order, para. 42.

^{5/} *The Cost of Basic Universal Service*, prepared for MCI Communications Corporation by Hatfield Associates, Inc. (July 1994), filed with the Comments of MCI Communications (continued...)

high-gain L-band transceiver at the user's location, with a standard interface and handset. All outbound calls (from the customer) are routed through the satellite to the AMSC earth station in Reston, Virginia, and into the public switched telephone network. Inbound calls (to the customer) are routed through the AMSC earth station to the satellite and terminate at the customer's location. If a local provider has sufficient traffic volume, it may choose to install a local gateway earth station as an alternative to routing calls through the Reston earth station.

The Commission's new universal service policy establishes competitive neutrality and makes high cost area support available to all carriers, regardless of their technology. Order at paras. 47-50. As a provider of fixed-site service to residential and business customers in rural and remote areas, AMSC, for the first time, should be able to gain eligibility for high cost area support.^{5/} AMSC's system provides all but one of the "core" telecommunications services that a carrier must provide to be eligible for support in a service area, including voice grade access to the public switched network, dual-tone multi-frequency (DTMF) signaling or its equivalent, single-party service, access to operator services, access to interexchange services, and access to directory assistance. AMSC does not provide access to all elements of what is known as "Enhanced 911" or "E911" service.

In addition to fixed-site service, AMSC can provide mobile telecommunications services to rural health care providers, whose telecommunications needs will be subsidized under the new

^{5/}(...continued)

Corporation, FCC Docket No. 80-286 (October 28, 1994).

^{6/} AMSC has long urged the Commission to make clear that high cost area support is available to LECs reselling AMSC's system to customers in areas without any wireline service. *See, e.g.*, Comments of AMSC Subsidiary Corporation, CC Docket No. 95-115, dated September 27, 1995; Comments of AMSC Subsidiary Corporation, CC Docket 80-286, dated October 10, 1995.

program. Improved mobile communications are urgently needed in rural and remote areas for the provision of emergency medical care -- approximately eighty percent of casualties in emergency situations are in rural areas, and, in order to locate, treat, and transport such individuals, rural health care providers must be equipped with sufficient mobile communications capability.^{8/} Unfortunately, because of the prohibitive cost of constructing and operating terrestrial Emergency Medical Radio Service systems and other private radio systems in some rural areas, as well as the limited range of cellular service, mobile telecommunications in these areas is often either inadequate or entirely unavailable. In such areas, rural health care providers must identify alternative means of mobile communication for use in response to medical emergencies.

AMSC addressed these issues in its comments last December on the Joint Board's Recommended Decision.^{9/} As stated there, support from a newly-configured universal service fund would greatly facilitate the use of AMSC's system to provide these unique and crucial mobile communications services to rural health care providers. The potential importance of the use of AMSC's system for emergency health care in rural areas warrants Commission flexibility as it examines the relevant issues in this proceeding, described further below.

^{8/} *Findings and Recommendations of the Advisory Committee on Telecommunications and Health Care* at 5.

^{9/} Comments of AMSC Subsidiary Corporation, CC Docket No. 96-45, dated December 19, 1996.

Discussion

I. High Cost Area Support

AMSC's eligibility for high cost area support would greatly benefit consumers in rural and remote areas, and could in the long run reduce the cost of the Commission's universal service program. To ensure that AMSC can receive this support, the Commission should clarify the issues discussed below.

A. The Local Usage Requirement

In order to become eligible for high cost area support in a given service area, a carrier must offer a variety of telecommunications services or functionalities throughout that service area. In particular, the Commission requires that, amongst these services, a carrier must provide some minimum amount of "local usage" of its network.

Even though AMSC's system uses a satellite in geostationary orbit 22,000 miles above the earth and, at least for the moment, all calls pass through its Reston, Virginia earth station, a substantial portion of the calls to and from AMSC's fixed-site subscribers will originate and terminate within the subscriber's local area. In effect, these are local calls. The Commission should make clear that such traffic qualifies as "local usage." In contrast, the Commission's adherence to an overly technical and rigid definition of "local" would not only be counter to the interests of rural consumers, it would also penalize AMSC for its system design, thereby conflicting with the Commission's explicit goal of technological and competitive neutrality.^{10/}

^{10/} In its Order, the Commission stated the following:

Technological neutrality will allow the marketplace to direct the advancement of technology and all citizens to benefit from such development. By following the principle of technological neutrality, we will avoid limiting providers of universal service to
(continued...)

B. Access to Enhanced 911 Service

Under the Commission's new universal service policy, a telecommunications carrier must provide access to E911 service to be eligible for high cost area support in a given service area. In the Order, however, the Commission took account of the fact that its decision last year in its E911 proceeding^{11/} gave certain specific Commercial Mobile Radio Service ("CMRS") providers up to five years to make the technical upgrades necessary to provide access to E911 service. Order at para. 90, *citing* E911 Order, 3 CR at 987-88. The Commission provided that these wireless carriers (cellular, broadband PCS, and certain SMR providers) may still gain eligibility for universal service support during this upgrade period by petitioning their state commissions and demonstrating that "exceptional circumstances" currently prevent them from offering access to E911. Order at paras. 90-92.

AMSC agrees with the thrust of this exception and urges the Commission to clarify that it also applies to other CMRS providers, including AMSC as a provider of MSS. In its 1996 E911 decision, the Commission fully exempted MSS providers from the E911 requirements for the indefinite future. E911 Order, 3 CR at 991. In addition, this exemption should be automatic for

^{10/}(...continued)

modes of delivering that service that are obsolete or not cost effective. The Joint Board correctly recognized that the concept of technological neutrality does not guarantee the success of any technology supported through universal service support mechanisms, but merely provides that universal service support should not be biased toward any particular technologies. We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies. Order at 49.

^{11/} Report and Order and Further Notice of Proposed Rulemaking, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, 3 CR 967 (1996) ("E911 Order").

MSS providers, since the Commission has already determined that for MSS providers the burden of offering E911 is “exceptional.”^{12/}

C. Restriction on Per-line Support for Resale Service

Pursuant to Section 214(e) of the Telecommunications Act of 1996 (the “Telecom Act”), the Commission has determined that a “pure” reseller of telecommunications service cannot gain eligibility for universal service support in a given service area. Order at para. 152. In addition, the Commission has determined that an eligible carrier that resells wholesale service to a customer cannot receive universal service support for that resale service. Order at para. 174. According to the Commission, support in either case would be unfair, as the resale carrier would have already “receive[d] the benefit of universal service support by purchasing wholesale services at a price based on the retail price of a service -- a price that already includes the universal service support payment received by the incumbent provider.” Order at para. 161. In essence, this resale carrier would be receiving two per-line subsidies on each resold line.

AMSC agrees that it is appropriate to prevent such “double” recoveries. The Commission’s decision not to support resale service from **any** carrier, however, is overly rigid. Not all resellers will obtain wholesale services from incumbent LECs, or from carriers that are themselves already receiving universal service support for the same facilities. For instance, AMSC will not automatically receive subsidies just for having its facilities in place. Thus, as long as AMSC is not claiming support for service to a given customer, an entity that resells AMSC’s service should be able to gain eligibility and claim support for service to that customer.

^{12/} While AMSC is unable to comply with the technical requirements of the Commission’s E911 Order, AMSC recognizes the importance of emergency communications. AMSC has implemented an emergency telephone service in conjunction with its domestic MSS system.

D. Advertising Throughout the Service Area

Under the Telecom Act, in order to be eligible for universal service support, a carrier must advertise in media of general distribution throughout its entire service area the availability and price of its services. In its Order, the Commission does not specify what a carrier must do to satisfy this general requirement, instead leaving it to the states to establish any necessary guidelines. Order at para. 148. The Commission should clarify, however, that in the case of a nationwide system such as that of AMSC, a carrier may place an advertisement in a nationally circulated publication. The efficiency of a nationwide system will be lost if it must bear the expense of advertising locally in every area where it may provide service, even if that service is to a handful of subscribers.

II. The Applicable Rate for Mobile Telecommunications Services to Rural Ambulances and Other Rural Emergency Medical Vehicles

AMSC is able to provide mobile telecommunications capability to rural ambulance services and other emergency medical vehicles in rural areas. If AMSC is able to provide this MSS emergency communications capability at a discount, the technology could be made more widely available. To fully realize these benefits, the Commission should clarify the rates at which rural health care providers are entitled to receive emergency mobile telecommunications services.

The Telecom Act requires that eligible health care providers be charged for telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas in that state” (the “urban rate”). Under the Commission’s policy, this urban rate is equal to the highest tariffed or publicly available rate actually being charged to commercial customers for similar services within the jurisdictional boundary of the nearest city

of 50,000 or more in the state. Order at paras. 669-70.

The Commission should adopt a fair, market-oriented approach and establish that the urban services that are “similar” to AMSC’s rural emergency medical communications are the terrestrial mobile communications services typically used by ambulances and other emergency medical vehicles in those urban areas. This interpretation will furnish all potential providers of emergency mobile communications systems with the same subsidy, and will provide equivalent points of reference for all marketplace competitors. Under this approach, market forces and the relative cost-effectiveness of these competing technologies, rather than the government, can determine which mobile technology will be the most successful in rural and remote areas.^{13/}

If the Commission were to conclude that the relevant service for AMSC is **urban MSS**, eligible health care providers would receive no subsidy for AMSC’s service, as the cost of MSS is the same in rural and urban areas. Users of terrestrial systems, meanwhile, would receive significant subsidies, reflecting the higher costs of such systems in rural areas. As a result, these operators would gain a substantial competitive advantage, making immaterial the relative cost-effectiveness of AMSC’s system.

^{13/} Under the Commission’s rules, after selecting a telecommunications carrier, the health care provider will be required to certify to the administrator that the chosen service is, to the best of its knowledge, the most cost-effective service available.

Conclusion

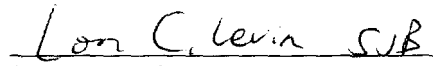
Accordingly, AMSC hereby urges the Commission to clarify the issues described herein, and reconsider any of these issues to the extent necessary.

Respectfully submitted,

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